

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:

Walter Neira

Debtor.

Chapter 13

Case No. 13-46737 (ESS)

ORDER RESOLVING MOTION FOR RELIEF FROM THE AUTOMATIC STAY AND
DEBTOR'S OBJECTION TO PROOF OF CLAIM #1 OF FNBN I, LLC

Upon the motion filed by secured creditor FNBN I, LLC through its servicer, PennyMac Loan Services, LLC seeking relief from the automatic stay pursuant to 11 U.S.C. §362(d) with respect to the real property located at 59 -30 60th Street, Maspeth, New York 11378 (the "Property") filed as Docket No. 19 (the "FNBN Motion for Relief") and upon the Debtor's Motion Objecting to the Proof of Claim #1 filed as Docket No. 21 (the "Debtor's Objection", and together with the PennyMac Motion, the "Motions"), and it appearing that the parties have reached a resolution of the Motions in accordance with the terms and conditions contained in this Order, and the Court having reviewed the terms contained herein,

And it now appearing that:

A. Debtor is the owner of the Property.

B. The Debtor's interest in the Property is subject to a first mortgage in favor of Nationstar Mortgage LLC, as servicer for US Bank National Association, as Trustee for Lehman XS Trust Mortgage Pass-Through Certificates, Series 2007-15N, in the amount of \$415,689.10. *See Proof of Claim No. 3-1 on Claims Register.*

C. FNBN I, LLC is the holder of a Note and Mortgage dated March 22, 2007 in the principal amount of \$74,999.00, which is secured by the Property (the “Second Mortgage”).

D. On December 26, 2013, FNBN I, LLC filed a proof claim in the amount of \$93,806.74 (the "FNBN Proof of Claim").

E. On December 30, 2013, FNBN I, LLC by PennyMac Loan Services, LLC, through Counsel, filed an Objection to the Debtor’s Chapter 13 Plan as the filed plan did not adequately provide for the repayment of the pre-petition arrears listed on the FNBN Proof of Claim. *See Docket No. 14.*

F. On March 7, 2014, FNBN I, LLC by PennyMac Loan Services, LLC, through Counsel, filed the FNBN Motion for Relief as a result of Debtor’s failure to timely submit post-petition payments. *See Docket No. 19.*

G. On March 19, 2014, Debtor, through Counsel, filed ~~a the Debtor's~~ an Objection to the FNBN Proof of Claim. *See Docket No. 21.*

H. The Debtor obtained an appraisal dated December 26, 2013, that showed the value of the Property as \$410,000. FNBN I, LLC by PennyMac Loan Services, LLC, through Counsel, obtained a broker's price opinion dated May 31, 2014, that showed the value of the Property as \$420,000.

I. On August 8, 2014, the Debtor filed a Second Amended Chapter 13 Plan in which he indicated his intent to move to strip the Second Mortgage from the Property and to reclassify FNBN I, LLC’s mortgage lien as wholly unsecured and to avoid the mortgage lien.

It is hereby:

1. **ORDERED**, that the Motions are hereby settled as set forth herein; and it is further

2. **ORDERED**, that the Proof of Claim filed by FNBN I, LLC as Claim No. 1 on the Claims Register shall be treated as wholly unsecured; and it is further

3. **ORDERED**, that the mortgage lien held by FNBN I, LLC, on the Debtor' s real property located at 59-30 60th Street, Queens, New York 11378, that was duly filed with the Office of the City Register of The City of New York, State of New York, on March 22, 2007, with Document ID: 2007000173758, and recorded against said real property in the County of Queens, Block 2654, Lot 65, be deemed a wholly unsecured claim for the purposes of the Debtor's Chapter 13 plan and that said mortgage lien be declared null and void upon the successful completion of the Debtor's Chapter 13 plan and issuance of a discharge; and it is further

4. **ORDERED**, that upon the Debtor's successful completion of his Chapter 13 Plan and issuance of a discharge, the Clerk of the County of Queens shall cancel the lien made by Walter Neira to FNBN I, LLC, that was duly filed with the Office of the City Register of The City of New York, State of New York on March 22, 2007, with Document ID: 2007000173758, and recorded against said real property in the County of Queens, Block 2654, Lot 65; and it is further

5. **ORDERED**, that a copy of the Debtor's Chapter 13 Discharge, together with a copy of this Order may be recorded with the Office of the City Register of the City of New York and shall constitute a Release of the Second Mortgage. It shall be the Debtor's obligation to take the appropriate steps with the Office of the City Register of the City of New York to file the above referenced documents and pay any required fee; and it is further

6. **ORDERED**, that in the event the Debtor converts this bankruptcy petition to any other Chapter under the Bankruptcy Code, or this bankruptcy petition is dismissed or otherwise terminated

prior to discharge, ~~then this Order shall be NULL and VOID and~~ the Second Mortgage held by FNBN I, LLC shall be reinstated.

The parties hereby consent to the form and entry of this Order:

/s/Margaret J. Cascino

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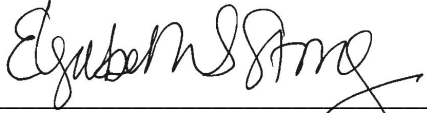
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So Ordered.

**Dated: Brooklyn, New York
November 5, 2014**




Elizabeth S. Stong
United States Bankruptcy Judge